

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JOSEPH N. D'AMICO, FORT  
DISCOVERY CORP., a Washington  
corporation, SECURITY SERVICES  
NORTHWEST, INC., a Washington  
corporation,

Plaintiffs,

v.

JEFFERSON COUNTY, a Washington  
County, DAVID STANKO, ROBERT  
GEBU, KATHLEEN KLER, DAVID  
SULLIVAN, KATE DEAN, GREG  
BROTHERTON,

Defendants.

CASE NO. 20-5253 RJB

ORDER ON DEFENDANT  
ROBERT GEBU'S MOTION FOR  
SUMMARY JUDGMENT

This matter comes before the Court on Defendant Robert Gebo's Motion for Summary Judgment (Dkt. 54) and his motion to strike (Dkt. 67). The Court has considered the pleadings filed regarding the motions and the file herein.

This case arises over a Plaintiff Joseph D'Amico and his companies' - Security Services Northwest, Inc. ("SSNW") and Fort Discovery Corp. - operation of a gun range in Jefferson

1 County, Washington on property commonly known as “Fort Discovery.” Dkt. 1. Defendant  
2 Gebo, a special investigator with the Jefferson County Sherriff’s Office, now moves for  
3 summary judgment dismissal of the claims asserted against him. Dkt. 54. For the reasons  
4 provided below, the motion (Dkt. 54) should be granted and the claims asserted against him  
5 dismissed.

6 **I. RELEVANT BACKGROUND FACTS AND PROCEDURAL HISTORY**

7 **A. RELEVANT BACKGROUND FACTS**

8 Prior to 1992, Plaintiff D’Amico, through Plaintiff SSNW, ran a security services  
9 business on the subject property which it leased from a third person who is not a party in this  
10 lawsuit. Dkt. 61-1, at 5. The use of the property became the subject of a land use dispute, and a  
11 Washington State Court of Appeals Division II decision found that in 1992, when Jefferson  
12 County enacted a zoning code, “its provisions for use of the land that SSNW had been leasing for  
13 its operations clashed with SSNW’s ongoing business, particularly when SSNW expanded its  
14 operations to include a paramilitary training base with increased use of its firing ranges and other  
15 facilities.” *Sec. Servs. Nw., Inc. v. Jefferson Cty.*, 156 Wn. App. 1008 (2010).

16 By way of background to that litigation, Plaintiff D’Amico states that in 2004, he  
17 attempted to apply for a building permit to add a bunkhouse and classroom to the shooting range.  
18 Dkt. 61, at 4. He asserts that his application was refused, but that he built the buildings anyway  
19 in the spring of 2005. *Id.* The Plaintiff maintains that a group of property owners across  
20 Discovery Bay from the shooting range, formed a group called “Discovery Bay Alliance,” and  
21 made several noise complaints about the activities on the property. *Id.* In July and August of  
22 2005, Defendant Jefferson County issued stop work orders. *Id.* Plaintiff D’Amico and the  
23 County then engaged in lengthy state court and administrative proceedings, which included at  
24 least two decisions from the Washington State Court of Appeals Division II. *Security Services*

1 *Northwest Inc., v. Jefferson County*, 144 Wn.App. 1002 (2008) and *Sec. Servs. Nw., Inc. v.*  
2 *Jefferson Cty.*, 156 Wn. App. 1008 (2010). This case is intertwined with these prior proceedings,  
3 and so the procedural history of those matters will be recounted here as provided in the 2010  
4 Washington State Court of Appeals Division II decision *Sec. Servs. Nw., Inc. v. Jefferson Cty.*,  
5 156 Wn. App. 1008 (2010):

6 In 2005 Jefferson County issued stop work orders to [SSNW] after receiving  
7 several noise complaints and learning that SSNW had constructed several  
8 unpermitted buildings and was conducting military special forces weapons  
9 training on its property, which at the time was zoned as rural residential. SSNW  
10 appealed the County's enforcement orders to the County's hearing examiner,  
11 arguing that its activities were protected as a nonconforming use.

12 The hearing examiner disagreed, ruling that SSNW had no legal prior  
13 nonconforming use rights as of January 6, 1992, because SSNW had violated the  
14 building code when it constructed three new buildings without the required  
15 permits. While awaiting the hearing examiner's ruling, the Jefferson County  
16 Superior Court granted the County's request for a temporary restraining order as  
17 well as preliminary injunction against SSNW.

18 SSNW filed a [Land Use Petition Act] appeal in Kitsap County Superior Court,  
19 asserting that the hearing examiner had erred in finding no prior legal  
20 nonconforming uses. The superior court ruled that (1) the County's land use  
21 enforcement actions were valid; (2) the hearing examiner had erred in denying  
22 that SSNW had established any legal prior nonconforming use; and (3) by 1992,  
23 SSNW had established a limited nonconforming use by virtue of its predecessor's  
24 security services on the site. The superior court also ruled, however, that most of  
the challenges raised by SSNW are without merit. The superior court affirmed (1)  
the hearing examiner's decision to uphold the County's stop work orders,  
concluding that the hearing examiner did not err in finding that the stop work  
orders were properly issued by the County, and that proper procedure was  
followed by the County in its enforcement actions, and (2) the hearing examiner's  
ruling that SSNW had no legal nonconforming rights to use the property for its  
post-1992 expanded security services business. In essence, the superior court  
found that the County's land use enforcement actions related only to SSNW's  
clearly illegal post-1992 activities, especially the erection of buildings without  
permits and on-site training of third parties.

The superior court remanded for another hearing to determine the scope of  
SSNW's nonconforming use as of January 6, 1992, when the County enacted the  
zoning code that rendered SSNW's later uses illegal. The purpose of this hearing  
was to establish the use which may be made of the property by SSNW following  
the Examiner's modified decision. In the meantime, the superior court ordered

1 that the temporary restraining order and the preliminary injunction would remain  
2 in effect pending the Hearing Examiner's final decision. SSNW appealed.

3 Affirming the superior court on appeal, [Washington Court of Appeals Division  
4 II] similarly reversed the hearing examiner's decision that SSNW had no legal  
5 prior nonconforming use rights as of January 6, 1992 . . . [and] affirmed the  
6 superior court's ruling that SSNW had limited nonconforming use rights as of  
7 January 6, 1992, which were properly limited to its pre-1992 activities. [It] held  
8 that (1) neither the hearing examiner nor the superior court erred in concluding  
9 that SSNW's current activities constituted an impermissible expansion of its pre-  
10 1992 uses and (2) SSNW has not lost any vested property right. [It] also noted,  
11 however, that the record was insufficient to show SSNW's activities as of 1992  
12 and its subsequent potentially legal intensification of those previously existing  
13 activities. Expanding the scope of the trial court's remand order, [it] remanded for  
14 a new hearing to determine the boundaries of SSNW's nonconforming use rights  
15 and to consider additional evidence on intensification of pre-1992 uses.

16 On remand, the parties stipulated that SSNW's pre-1992 security services  
17 business included the following components as of January 6, 1992: armed and  
18 unarmed site security; armed and unarmed armored car security; armed and  
19 unarmed K-9 detection and tracking; security alarm installation, monitoring, and  
20 security response; dispatching services, including armed and unarmed security  
21 guards; security service training for employees; armed and unarmed land patrol;  
22 and armed and unarmed maritime patrol. The parties also stipulated that these  
23 pre-1992 security services activities used the old Gunstone farm house for  
24 offices, a conference room, and living accommodations but that three new  
buildings SSNW erected without permits in 2005 to provide new accommodations  
were not preexisting nonconforming uses.

On July 27, 2009, a new hearing examiner ruled on remand that SSNW's pre-  
1992 nonconforming uses consisted of armed and unarmed site security . . . and  
alarm installation and monitoring. The hearing examiner also ruled that since  
1992, SSNW had lawfully intensified the following prior nonconforming uses:  
unlimited increase in the number of off-site employees . . . and use of a dock for  
marine security training.

The hearing examiner further concluded that the following were either unlawful  
post-1992 expansions or uses that had not occurred before 1992: more than 18  
armed and unarmed security personnel working on or from the site and needing  
weapons training; third-party use of or training at the shooting ranges; and use of  
helicopters for training or surveillance.

*Sec. Servs. Nw., Inc. v. Jefferson Cty.*, 156 Wn. App. 1008 (2010).

1 According to the Plaintiff, after five years of expensive litigation, Defendant Jefferson  
2 County did not attempt to shut his gun range down again for several years and so, he continued  
3 operations. Dkt. 61, at 5.

4 In November of 2014, Defendant David Stanko was elected as Jefferson County Sheriff  
5 for his first term. Dkt. 61. He served as sheriff for a four-year term. *Id.*

6 In 2015, Defendant Jefferson County passed a Noise Control Ordinance. Jefferson  
7 County Code (“JJC”) 8.70. Enforcement of the Noise Control Ordinance “is the responsibility of  
8 the Jefferson County Sheriff,” JCC 8.70.303, and penalties escalate: a warning is to be issued  
9 first, then a civil infraction, and then if there is no compliance, a criminal charge can be filed  
10 with the possibility of a fine or 90 days in jail, JCC 8.70.70(1)(a)-(c). A “lawful discharge of  
11 firearms” is not considered a violation of the ordinance. JCC 8.70.060(18).

12 Plaintiff D’Amico points to various emails he states that he acquired from a public  
13 records request that show that Sheriff Stanko was receiving emails from people in the  
14 community complaining about noise out at Fort Discovery. Dkt. 61. Plaintiff D’Amico points  
15 out that Sheriff Stanko had to run for re-election in 2018. *Id.*

16 According to Joseph Nole, Jefferson County’s undersheriff at the time, in January 2017, a  
17 group of people came to the department to see the Sheriff and discuss the activities going on out  
18 at Fort Discovery. Dkt. 62-1, at 27. (Undersheriff Nole was elected as sheriff in November of  
19 2018, beating Sheriff Stanko; Nole is the current sheriff). *Id.* Undersheriff Nole states that he got  
20 “pulled” into the meeting. *Id.* He states the visitors gave him copies of 2009 and 2010 court  
21 orders related to SSNW and discussed their theory that there are people shooting illegally out on  
22 the Fort Discovery property (because of the 2009 and 2010 court orders limiting who can shoot  
23 out there) and so the noise ordinance was being broken. *Id.* at 27-28. Intrigued by the idea,  
24 Undersheriff Nole states that he conferred with Michael Hass, the Jefferson County Prosecuting

1 Attorney, and David Alvarez, the chief civil attorney, and asserts they told him “they wouldn’t  
2 do anything” even if he came up with anything to send them. *Id.*, at 28. Feeling it was “kind of  
3 a civil matter,” he told Sheriff Stanko that he didn’t think it was something they should get  
4 involved with – that it might lead to litigation. *Id.* Nole states that prior to Sheriff Stanko’s  
5 tenure, the department had a policy of not responding to complaints of noise coming from Fort  
6 Discovery. Dkt. 62-1, at 30. According to Nole, the complaints were recorded but the  
7 department took no action on them. *Id.* He states that he does not know why prior sheriffs did  
8 not act on the noise complaints regarding Fort Discovery. *Id.*

9       Soon after undersheriff Nole indicated that he did not think they should get involved,  
10 sometime in late January 2017, Sheriff Stanko assigned Defendant Gebo (the moving party here)  
11 to investigate who was using the facilities at Fort Discovery. Dkt. 62-1, at 6. (In January 2017  
12 to April 2017, Defendant Gebo, who was retired from the Seattle Police Department, was a paid  
13 part-time special investigator for the Jefferson County Sheriff’s Department. Dkt. 62-1, at 3-4.  
14 After he realized he couldn’t continue to be paid for that position as well as being a Jefferson  
15 County Civil Service Commissioner, he continued on with the department as a volunteer. *Id.*) In  
16 any event, Defendant Gebo states that Sheriff Stanko gave him copies of 2009 and 2010 court  
17 orders relating to SSNW and told him to investigate whether “any of those things that . . . Fort  
18 Discovery was not supposed to be doing were actually happening.” *Id.* Sheriff Stanko also gave  
19 Gebo a printout purportedly from Fort Discovery’s website listing “satisfied customers.” Dkt.  
20 55, at 3.

21       Defendant Gebo states that he began contacting, by phone and by email, the U.S. Coast  
22 Guard, the Federal Bureau of Investigation, the U.S. Customs & Border Protection, the  
23 Washington State Patrol, the Kitsap County Sheriff’s Office, and the Clallam County Sheriff’s  
24

1 Office, “to see if they used the facilities out at Fort Discovery,” and if so, how they used the  
2 facilities. Dkt. 62-1, at 4-5.

3 For example, on March 14, 2017, Defendant Gebo emailed the Captain Chris Old at the  
4 Washington State Patrol:

5 Captain Old – Sheriff Stanko suggested I contact you regarding your  
6 knowledge of WSP’s involvement in range training, SWAT and sniper training,  
7 bomb disposal and post-blast investigation training that may have occurred on  
8 property known as “Fort Discovery” in Jefferson County since 2009.

9 By way of explanation [SSNW] is owned and operated by Mr. Joe  
10 D’Amico providing private security services as well as a large range area which  
11 has been used by local and federal police agencies for firearms, SWAT, sniper  
12 and related training. The range and related structures are known as “Fort  
13 Discovery.”

14 In 2009 a court order was issued strictly limiting the range and related  
15 operations and disallowing any “third party” training at the facility. It is alleged  
16 that the court order has been largely ignored through the years as agencies and  
17 groups of agencies have used the facility for live fire range training, sniper  
18 training, helicopter operations, and other related operational training.

19 We are interested in determining if any members of the Washington State  
20 Patrol, in groups or individually, have been involved in any training operations at  
21 Fort Discovery since 2009. It is quite likely that the attendees and their agencies  
22 had no knowledge of the preexisting court order.

23 Dkt. 61-1, at 38. In an email a few days later with another person at the Washington State Patrol,  
24 Gebo acknowledges that, “[f]or a variety of reasons these alleged violations of the prior court  
order have been largely ignored by law enforcement and the Jefferson County Prosecutor’s  
Office even though the owners of neighboring properties have repeatedly reported and  
complained. That situation has recently changed.” *Id.*, at 39.

By way of further example, on March 20, 2017, Gebo emailed the United States Coast  
Guard:

Lt. Comdr. Bor – I hope I am addressing this request for information to the  
proper place.

The Jefferson County Sheriff’s Office and the Jefferson County  
Prosecuting Attorney’s Office are interested in knowing specific dates and times  
number of USCG personnel types of weapons and amount of ammo fired fees  
paid and copies of contracts related to the Coast Guard using a range and training

1 facility known as “Fort Discovery” in Jefferson County Washington since 2009.  
2 This request for information should be considered an official request for  
information under the Freedom of Information Act.

3 By way of background, in 2009, Jefferson County filed a lawsuit against  
[SSNW] the owners and operators of Fort Discovery alleging the operation  
4 violated several building and land use codes. A lengthy court battle ensued with  
the case being heard by the Washington State Court of Appeals which remanded  
5 the case back to the county. The result of the court action was an order directing  
SSNW to roll their activities back to the level they were involved in in 1992 and  
that no “third party training” should occur at Fort Discovery.

6 Since that time SSNW has largely ignored the existence of this court order  
as large numbers of local state and federal agencies have used the range and  
7 related facilities for training and weapons qualification. For a variety of reasons  
repeated complaints and reports by concerned neighbors and citizens were also  
8 largely ignored. That situation has recently changed.

9 The matter is likely headed for additional hearings in court. It is widely  
accepted the agencies using the facilities at Fort Discovery were not aware of the  
2009 court order. There is no date set for any court hearing(s) but your prompt  
10 response is appreciated. If you should have any questions regarding this request  
for information please contact me.

11 *Id.*, at 41. Gebo sent a similar email to the Kitsap County Sheriff’s Office (Dkt. 61-1, at 42) and  
12 the Department of Homeland Security (Dkt. 61-1, at 53).

13 According to Gebo, several of the witnesses he contacted asked him “if their  
14 agency/organization should continue to use the range facilities at Fort Discovery. In each of  
15 those inquiries [his] answer was that the situation was likely headed for additional court hearings  
16 and that they should make their own decision as to what they, or their agency, should do.” Dkt.  
17 55, at 4.

18 Plaintiff D’Amico states that he had a Facebook news page and that he criticized Sheriff  
19 Stanko on it. Dkt. 61, at 3. He asserts that on March 2, 2017, he posted on Facebook about his  
20 view that Sheriff Stanko was responsible for a death in the jail. *Id.*

21 Over the next several months, through his investigation, Gebo learned that several  
22 agencies had paid to use Fort Discovery’s gun ranges after 2009 and 2010. Dkt. 55, at 3. On  
23 June 26, 2017, Sheriff Stanko emailed Gebo and asked him to tell CORPES, a retired law  
24

1 enforcement group of which Gebo was a member, that Sheriff Stanko did not “endorse nor  
2 support any [weapons] qualifying at Fort Discovery until court order is complied with in full.  
3 Please tell them no qualifying at Fort Discovery.” Dkt. 61-1, at 26.

4 Defendant Gebo met with Phil Hunsucker, a Jefferson County prosecutor, regarding the  
5 status of his investigation of Fort Discovery. Dkt. 62-1, at 11. On August 31, 2017, Gebo  
6 received an email from Sheriff Stanko that states that “Phil Hunsucker would like us to carry the  
7 investigation one step further . . . could you inquire with the Revenue folks.” Dkt. 61-1, at 51.  
8 Gebo contacted the Washington Department of Revenue about Fort Discovery particularly after  
9 noticing that one of the receipts sent to him by “Valley Swat” for services out at Fort Discovery  
10 did not include any tax charges. Dkts. 55, at 5; and 61-1, at 17. Further, Gebo states that he was  
11 asked by the Jefferson County Prosecutor’s Office to investigate whether those who used Fort  
12 Discovery were also being served meals for possible health code violations. Dkt. 62-1, at 13.  
13 Under Washington Administrative Code 246-215-08600(1), it is a misdemeanor to operate a food  
14 establishment without a permit. Jefferson County has incorporated the Washington Department of  
15 Health’s Food Services Code. JCC 8.05.020.

16 Gebo states that he did not make the charging decisions; he conducted the investigation  
17 and turned the information he found over to the prosecutor. Dkt. 55, at 4-5. He also states he did  
18 not take any enforcement action, seek a search warrant, or arrest anyone. *Id.*

19 According to Plaintiff D’Amico, Gebo’s contacts with his customers “drove them off.”  
20 Dkt. 61, at 14. By way of example, he points to a May 17, 2017 email from the U.S. Coast  
21 Guard indicating that it would not use his facility until the legal issues are resolved. *Id.* Plaintiff  
22 D’Amico states that the following customers of the facility from 2000-2016 never returned:  
23 divisions of the U.S. Coast Guard, divisions of the U.S. Customs and Border Protection,  
24 divisions of the U.S. Department of Homeland Security, “Valley Swat,” and Washington State

1 Parks Police. *Id.* According to the Second Amended Complaint, the Plaintiffs' landlord evicted  
2 them in September of 2017. Dkt. 37, at 10.

3 The Second Amended Complaint makes claims against Defendant Gebo for violations of  
4 Washington's Consumer Protection Act, RCW 19.86, *et. seq.*, tortious interference with a  
5 business expectancy, and for civil conspiracy. Dkt. 37.

## 6 **B. PROCEDURAL HISTORY**

7 On June 4, 2020, Defendants Jefferson County Board of Commissioners Kathleen Kler,  
8 David Sullivan, Kate Dean, and Greg Brotherton moved for summary judgment dismissal of the  
9 42 U.S.C. § 1983 claims asserted against them, arguing that they were entitled to absolute  
10 immunity from a suit brought against under 42 U.S.C. § 1983 for their legislative activities. Dkt.  
11 19. Their motion was granted and those parties, except Defendant Kler, were dismissed. Dkt.  
12 36. The parties stipulated to the dismissal of the additional claims made against Defendant Kler  
13 and she was dismissed. Dkt. 50.

14 Defendant Gebo now moves for summary judgment dismissal of all claims made against  
15 him. Dkt. 54. The Plaintiffs respond and oppose the motion. Dkt. 60. Defendant Gebo has  
16 replied and moves to strike portions of the Plaintiffs response. Dkt. 67. The motions are ripe for  
17 consideration. This opinion will first consider Defendant Gebo's motion to strike (Dkt. 67) and  
18 then his motion for summary judgment (Dkt. 54).

## 19 **II. DISCUSSION**

### 20 **A. MOTION TO STRIKE**

21 Defendant Gebo moves to strike portions of the Plaintiffs' response which points to evidence  
22 that is either not in the record or does not support Plaintiffs' contentions. Dkt. 67.

23 The motion to strike should be denied without prejudice. While the Court recognizes that  
24 some of the Plaintiffs' claims are not supported by the citation to the record they provide or is

1 not in the record, a motion to strike is not necessary. The Court is able to separate fact from  
2 supposition.

### 3 **B. SUMMARY JUDGMENT STANDARD**

4 Summary judgment is proper only if the pleadings, the discovery and disclosure materials  
5 on file, and any affidavits show that there is no genuine issue as to any material fact and that the  
6 movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56 (c). The moving party is  
7 entitled to judgment as a matter of law when the nonmoving party fails to make a sufficient  
8 showing on an essential element of a claim in the case on which the nonmoving party has the  
9 burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1985). There is no genuine issue  
10 of fact for trial where the record, taken as a whole, could not lead a rational trier of fact to find  
11 for the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586  
12 (1986)(nonmoving party must present specific, significant probative evidence, not simply “some  
13 metaphysical doubt.”). *See also* Fed. R. Civ. P. 56 (d). Conversely, a genuine dispute over a  
14 material fact exists if there is sufficient evidence supporting the claimed factual dispute,  
15 requiring a judge or jury to resolve the differing versions of the truth. *Anderson v. Liberty*  
16 *Lobby, Inc.*, 477 U.S. 242, 253 (1986); *T.W. Elec. Service Inc. v. Pacific Electrical Contractors*  
17 *Association*, 809 F.2d 626, 630 (9th Cir. 1987).

18 The determination of the existence of a material fact is often a close question. The court  
19 must consider the substantive evidentiary burden that the nonmoving party must meet at trial –  
20 e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477 U.S. at 254, *T.W. Elect.*  
21 *Service Inc.*, 809 F.2d at 630. The court must resolve any factual issues of controversy in favor  
22 of the nonmoving party only when the facts specifically attested by that party contradict facts  
23 specifically attested by the moving party. The nonmoving party may not merely state that it will  
24 discredit the moving party’s evidence at trial, in the hopes that evidence can be developed at trial

1 to support the claim. *T.W. Elect. Service Inc.*, 809 F.2d at 630 (relying on *Anderson, supra*).  
2 Conclusory, non-specific statements in affidavits are not sufficient, and “missing facts” will not  
3 be “presumed.” *Lujan v. National Wildlife Federation*, 497 U.S. 871, 888-89 (1990).

#### 4 **C. CLAIM UNDER WASHINGTON’S CPA**

5 Washington’s CPA was enacted to protect the public from “unfair or deceptive acts or  
6 practices in the conduct of any trade or commerce.” *Indoor Billboard/Washington, Inc. v.*  
7 *Integra Telecom of Washington, Inc.*, 162 Wn.2d 59, 73, 170 P.3d 10, 17 (2007)(quoting RCW  
8 19.86.020). To make a CPA claim, “a plaintiff must establish five distinct elements: (1) unfair or  
9 deceptive act or practice; (2) occurring in trade or commerce; (3) public interest impact; (4)  
10 injury to plaintiff in his or her business or property; (5) causation.” *Hangman Ridge Training*  
11 *Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wash.2d 778, 780 (1986); *Keodalah v. Allstate*  
12 *Insurance Co.*, 194 Wash.2d 349, 349-350 (2019).

13 The Plaintiffs’ claims against Defendant Gebo for violations of the CPA should be  
14 dismissed. The Plaintiffs have failed to point to issues of fact on the first and second elements,  
15 that Defendant Gebo engaged in a “deceptive act or practice occurring in trade or commerce.”  
16 Defendant Gebo was investigating potential violations of the county code. The Plaintiffs have  
17 failed to demonstrate that Defendant Gebo’s emails or phone calls were deceptive. While he  
18 appears to commit scrivener’s errors in his emails occasionally, pointing to a 1992 court order  
19 rather than the 2009 hearing examiner’s decision, for example, and indicates that hearings may  
20 occur, the Plaintiffs fail to show that these were deceptive statements.

21 Defendant Gebo’s motion for summary judgment dismissal of the CPA claim (Dkt. 54)  
22 should be granted. This claim should be dismissed.

**D. CLAIM FOR TORTIOUS INTERFERENCE WITH BUSINESS EXPECTANCY**

In order to make a claim for tortious interference with a contractual relationship or business expectancy, a Washington plaintiff must prove five elements:

(1) the existence of a valid contractual relationship or business expectancy; (2) that defendants had knowledge of that relationship; (3) an intentional interference inducing or causing a breach or termination of the relationship or expectancy; (4) that defendants interfered for an improper purpose or used improper means; and (5) resultant damage.

*Pac. Nw. Shooting Park Ass'n v. City of Sequim*, 158 Wn.2d 342, 350 (2006).

The claim for tortious interference with a business expectancy asserted against Defendant Gebo should be dismissed. The Plaintiffs have failed to point to issues of fact on the fourth element, that he “interfered for an improper purpose or used improper means.” *Pac. Nw. Shooting Park*, at 350. The Plaintiffs assert that Defendant Gebo “induced the breach of Fort Discovery’s contracts for political purposes.” Dkt. 60. The Plaintiffs then go on to discuss political pressure, that in the Plaintiffs’ view, Sheriff Stanko was operating under. There is no evidence that Gebo was motivated by a political purpose.

The Plaintiffs argue that the Jefferson County Sheriff’s Office does not enforce building or land use code violations and so maintain that this was an improper investigation. The Plaintiffs fail to acknowledge that this was not a building or land use code violation investigation. Under Washington law, county sheriff’s and their deputies enforce the laws of their counties and investigate potential violations of the law. RCW 36.28.010, 38.28.011, and 36.28.020. The Plaintiffs’ fail to acknowledge that the sheriff and his appointed representative, Defendant Gebo, had jurisdiction to investigate potential criminal violations of the noise ordinance, health codes, or tax laws. The noise ordinance excluded legal discharges of firearms; conversely, the illegal discharge of firearms was covered by the noise ordinance. Despite the Plaintiffs’ expert’s assertion that the investigation was a fishing expedition, the Plaintiffs fail to

1 point to any evidence that Gebo's investigating was done for an improper purpose. Likewise,  
2 their contention, that Gebo's use of county resources to contact Fort Discovery's customers was  
3 improper because the investigation was inappropriate, fails. The Plaintiffs have failed to point to  
4 evidence that Gebo's investigation was for an improper purpose or by improper means,  
5 accordingly, they have failed to show that his use of county resources to conduct the  
6 investigation was tortious.

7 Defendant Gebo's motion for summary judgment dismissal of the tortious interference  
8 with a business expectancy claim (Dkt. 54) should be granted. This claim should be dismissed  
9 with prejudice.

#### 10 **E. CLAIM FOR CIVIL CONSPIRACY**

11 Under Washington law, "[a] conspiracy is a combination of two or more persons who  
12 contrive to commit a criminal or unlawful act, or to commit a lawful act for criminal or unlawful  
13 purposes." *Adams v. King County*, 164 Wash.2d 640, 660 (2008)(*internal citation omitted*). For  
14 there to be a conspiracy, Plaintiff must allege that the Defendants "entered into an agreement of  
15 some kind with the other conspirators to accomplish the object of the conspiracy." *John Davis &*  
16 *Co. v. Cedar Glen # Four, Inc.*, 75 Wash.2d 214, 223, (1969).

17 The Plaintiffs claim for civil conspiracy against Defendant Gebo should be dismissed.  
18 The Plaintiffs have failed to point to issues of material fact that supports the existence of an  
19 agreement that Defendant Gebo and another entered into "to commit a criminal or unlawful act,"  
20 or to "commit a lawful act for criminal or unlawful purposes." *Adams*, at 660. Defendant Gebo  
21 was investigating possible violations of the county noise ordinance, tax laws and health codes at  
22 the direction of the Sheriff and county prosecutor.

23 Defendant Gebo's motion for summary judgment dismissal of the civil conspiracy claim  
24 (Dkt. 54) should be granted. This claim should be dismissed with prejudice.

1       **F. CONCLUSION**

2       Defendant Gebo's motion should be granted (Dkt. 54) and all claims asserted against him  
3 should be dismissed. The Court need not reach Defendant Gebo's remaining arguments for  
4 dismissal.

5                                       **III.    ORDER**

6       Therefore, it is hereby **ORDERED** that:

- 7           • Defendant Robert Gebo's motion to strike (Dkt. 67) **IS DENIED WITHOUT**  
8           **PREJUDICE;**
- 9           • Defendant Robert Gebo's Motion for Summary Judgment (Dkt. 54) **IS**  
10          **GRANTED;** and
- 11          • The claims asserted against Defendant Robert Gebo **ARE DISMISSED WITH**  
12          **PREJUDICE.**

13       The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
14 to any party appearing *pro se* at said party's last known address.

15       Dated this 1<sup>st</sup> day of February, 2021.

16                                       

17                                       ROBERT J. BRYAN  
18                                       United States District Judge